

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

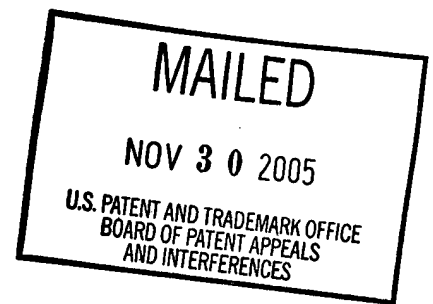
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARC TRAYLOR

Appeal No. 2005-1393
Application No. 09/751,609

ON BRIEF



Before KIMLIN, WALTZ, and KRATZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests rehearing of our decision of July 29, 2005, wherein we affirmed the examiner's rejection of claims 1-20 under 35 U.S.C. § 103(a) over Nagy.

Appellant takes issue with our interpretation of the term "bendable" in Nagy, and cites the reference at column 2, lines 44-46 which reads as follows:

This strap is bent upon itself between its ends as at **22** to provide an upstanding vertically disposable leg **24** and an adapter bracket **26**.

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Appellant submits that "[c]learly Nagy uses the word 'bendable' to describe the permanent deformation of the flat-faced metal strap that is bent to form a bracket; that is, the strap does not revert to its original shape when the bending force is removed" (sentence bridging pages 2 and 3 of request).

While we agree with appellant that it is fair to interpret Nagy as describing a bending of the metal strap to form a bracket, this argument misses the point as to whether leg 24 of Nagy meets the requirement of the claimed resilient member. If it is appellant's argument that member 24 of Nagy is not bendable and, therefore, not resilient because the strap does not revert to its original shape after bending, such logic falls because, manifestly, the material of member 24 of Nagy remains bendable. In any event, accepting appellant's definition of "resilient" as "capable of withstanding shock without permanent deformation or rupture," we find that it is reasonable to conclude that member 24 of Nagy is fully capable of withstanding some degree of shock without suffering permanent deformation or rupture. Appellant has advanced no compelling reasoning to the contrary.

In response to our statement that "the appealed claims are drafted in broad language which specifies no magnitude for the force constant, displacement and mechanical shock" (page 4 of

decision, second paragraph), appellant submits that the term "selected" in claim 1 "qualifies the magnitude of the force constant as a deliberate choice considerate of the mechanical shock" (page 3 of request, last paragraph). However, while the claim language expresses a relationship between the force constant and the displacement of the distal portion of the resilient member, the claim defines no magnitude or range of magnitude for the force constant which would serve to distinguish the resilient member over member 24 of Nagy. Clearly, member 24 of Nagy also has a force constant that displaces its distal portion when the paintbrush is subjected to sufficient mechanical shock. Whether the paintbrush slides off the magnet is also a function of the force of the magnet and the material of the paintbrush.

Regarding separately argued claim 10, appellant maintains that "there is no motivation in Nagy to make a design choice to optimize the acceleration of the paintbrush" (page 4 of request, last paragraph). However, we are convinced that one of ordinary skill in the art, in designing the paintbrush holder of Nagy, would have found the problem of maintaining the paintbrush on the holder when subjected to mechanical shock as an obvious one, as well as its solution of optimizing the acceleration of the


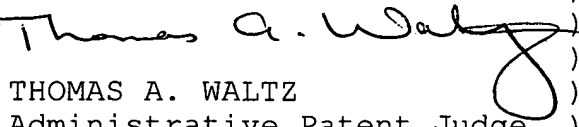
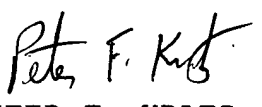
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paintbrush. In our view, selecting the proper resiliency for member 24 of Nagy in order to retain the paintbrush on the holder would have been readily apparent to one of ordinary skill in the art. In re Ludwig, 353 F.2d 241, 243-44, 147 USPQ 420, 421 (CCPA 1965).

In conclusion, based on the foregoing, appellant's request is granted to the extent we have reconsidered our decision, but is denied with respect to making any change therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REQUEST FOR REHEARING - DENIED


EDWARD C. KIMLIN)
Administrative Patent Judge)
)

THOMAS A. WALTZ)
Administrative Patent Judge)
)

PETER F. KRATZ)
Administrative Patent Judge)

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